FILE COPY

Office Supreme Court, U.S.
FILED
OCT 31 1933
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No. 565

RUTH LOUGHRAN,
Petitioner

vs.

JOHN LOUGHRAN, JOSEPH LOUGHRAN and CHARLES LOUGHRAN, TRUSTEES OF THE ESTATE OF DANIEL LOUGHRAN, SR.,
Respondents

Petition for Writ of Certiorari to the Court of Appeals of the District of Columbia

ROBERT H. MCNEILL,
Attorney for Petitioner.

PRINTED BY WASHINGTON DAILY RECORD, PRINTCRAFT BUILDING

INDEX

PETITION FOR CERTIORARI

Page

I. History of the Case 1

II. Grounds for Review by Certiorari 7
(Specification of Errors)

III. Brief in Support of Petition 10

1. The decision of the Court of Appeals of the District of Columbia, while recognizing the validity of petitioner's marriage in Florida, denied her any right to share in the estate of her husband, both as to dower and her distributive share of his personalty, and places her "without the pale of the law." 10

2. The Court of Appeals' decision erroneously held that it was unnecessary to deal with and interpret the legal effect of petitioner's Florida marriage, and her subsequent domicile and judicial recognition thereof in the State of Virginia 17

3. The decision of the Court of Appeals was in error in holding it unnecessary to consider the bona fides of petitioner's residence and marriage in Florida, and her subsequent good faith acquisition of a Virginia domicile 20

4. The interpretation of the Court of Appeals of the case of Olverson v. Olverson, 54 App. D. C. 48, in holding same to be decisive of the present case, is in error. 33

5. The legal effect of the Court of Appeal's decision is to declare void the pertinent statutes of the District of Columbia relative to a widow's dower and distributive rights in the estate of her deceased husband. 39

Page

6. The legal effect of the decision of the Court of Appeals is to declare void, in so far as equity is concerned, the marriage between petitioner and her husband. 41

7. The Court of Appeals is in error in determining that had the marriage been celebrated in the District of Columbia it would have been absolutely void. 42

8. The legal effect of the decision is to deny full faith and credit to the public records of the State of Florida, and the judicial decrees of the State of Virginia, and also to deprive petitioner of her property without due process of law, as guaranteed to her by the Fifth Amendment of the Constitution. 45

9. The Court of Appeals' decision, in giving to Section 966 of the Code extraterritorial force is in error, as is also its decision with reference to the public policy established by said Section 966. 47

IV. Conclusion 51

CASES, TEXTS, STATUTES CITED

Abramson v. Abramson, 60 App. D. C. 119 ..... 30, 41
Comm. v. Lane, 113 Mass. 458 and 471 45
Connelly v. Connelly, 14 Jur. 437, 2 Eng. L. & Eq. 570 39
Crawford v. Mississippi, 35 L. R. A. 224 25
Dalrymple v. Dalrymple, 2 Hagg. Cons. 54, 17 E. R. C. 11 39
Dickson v. Dickson, 1 Yerg. (Tenn.) 110, 24 Am. Dec. 444 ..... 39, 45
Eaton v. Eaton, 60 L. R. A. 605 25
Estate of Frank Smith, 17 L. R. A. 573 25
Farnshill v. Murray, 1 Bland 479, 18 Am. Dec. 344 39
Fenton v. Reed, 4 Johns 52, 4 Am. Dec. 241 39
Folliott v. Ogden, 1 H. Bl. 123, 3 T. R. 726 45
Griswold v. Ill. C. R. Co., 90 Iowa 265 49
Hall v. Baylous, 153 S. C. 292; 69 A. L. R. 527 25
Harlow v. Carroll, 6 App. D. C. 128 and 133 ..... 13, 47
Hartford Fire Ins. Co. v. Chi. M. & St. P. R. Co. 175 U. S. 91 49
Heflinger v. Heflinger, 136 Va. 289 ..... 24, 25

Hunter v. Potts, 4 T. R. 182, 100 Reprint 962 39
Huntington v. Attrill, 148 U. S. 657 and 674 ..... 44, 45
Huntzicker v. Crocker, Wis. 1908, 115 N. W. 340 12
In re Catherine Gabiesco, 119 La., 44 So. 438; 11 L. R. A. (N. S.) 1082 25
Johnson v. Chi. Great W. R. Co., 291 S. W. 120, 51 A. L. R. 877 and 883 48
Lacom v. Higgins, D. & R. 38, 16 ECL 425 39
Lanham v. Lanham, 117 N. W. 787, 17 L. R. A. (N. S.) 861 25
Levy v. Levy, 16 Ill. Apps. 358 12
Logan v. U. S., 144 U. S. 263 45
Loughran v. Loughran, Case No. 5868 Ct. of Apps. D. C. 4
Mason v. Mason, 101 Ind. 25 44
Medway v. Needham, 16 Mass. 157, 8 Am. Dec. 131 39
McAllister v. Dexter & P. R. Co., 106 Me. 371, 76 At. 891 53
McIlvain v. Scheibley, 109 Ky. 455, 59 S. W. 498 39
Olverson v. Olverson, 54 App. D. C. 48 ..... 8, 16, 18, 33, 34
Oscanyan v. W. R. Arms Co., 103 U. S. 277, 26 L. Ed. 546 ..... 15, 16
Park v. Baron, 20 Ga. 702 44
Peerless Pac. Co. v. Burchard, 1917 (C.) L. R. A. 353 25
Pennegar v. State, 87 Tenn. 244, 2 L. R. A. 203 25
Ponsford v. Johnson, 2 Blatchford 51, Sou. Di. of N. Y. 1847 ..... 31, 32, 45
Pope Mfg. Co. v. Gormully, 144 U. S. 224, 233, 36 L. Ed. 414, 418 49
Potter v. Brown, 5 East 124, 102 Reprint 1016 39
Printing & N. Registering Co. v. Sampson, L. R. 19 Eq. 462, 465 49
Pritchard v. Norton, 106 U. S. 124, 27 U. S. Law Ed. 104 53
Putnam v. Putnam, (Mass.) 8 Pick 433 39
Roote v. Roote, 33 App. D. C. 398 11
Sammons v. Sammons, 46 A. L. R. 39 (1918) 25
Scrimpshire v. Scrimpshire, 2 Hagg. Cons. 395 39
Smith v. Smith, 52 N. J. L. 207, 19 At. 255 39
Smith v. Woodworth, 44 Barb. 198 39
State v. Ross, 76 N. C. 242 39
Stevenson v. Gray, 17 B. Mon. Ky. 193 ..... 30, 39
Strong v. Clem, 12 Ind. 37, 74 Am. Dec. 200 53
Stull's Estate, 183 Pa. 625, 39 A. L. R. 359 25
Sutton v. Askew, 66 N. C. 172, 8 Am. Reports 500 53
Swartz v. Andrews, 137 Ia. 261, 114 N. W. 888 53
Tyler v. Andrews, 40 App. D. C. 100 ..... 28, 30, 44

Van Voorhis v. Brintnall, 86 Barb (N. Y.) 18, 40 Am. Reports 505 ..... 39, 45
Viertel v. Viertel, 99 Mo. App. 710, 75 S. W. 187 12
Warrender v. Warrender, 2 Cl. & F. 488, 6 Reprint 1239 39
Williams v. Oates, 27 N. C. 535 25
9 A. & E. Enc. Law, 2d Edition, 854 and Note 2 44
Story "Conflict of Laws," 91, 92 ..... 16, 45
Dicey, "Domicile," 162 45
5 R. C. L. Sec. 84, "Conflict of Laws" 37, 38
19 C. J. Sec. 21 p. 463 38
Story "Conflict of Laws," Sec. 258 38
Restatement, Conflict of Laws, Final Draft No. 1, "Marriage," Sec. 129, p. 170 17
Restatement, Conflict of Laws, Final Draft No. 1, "Marriage," Sec. 137, p. 176 18
Restatement, Conflict of Laws, Final Draft No. 1, "Marriage," Sec. 138, p. 177 ..... 18, 19
Restatement, Conflict of Laws, Final Draft No. 1, "Marriage," Sec. 139, p. 177 19
Restatement, Conflict of Laws, Final Draft No. 1, "Marriage," Sec. 142, p. 181 ..... 23, 24
49 C. J. 1072 and 1073 48
9 R. C. L. "Dower," Sec. 8 53
50 C. J. 858 48
Code of Laws, D. C. (1929) Title 14, Sec. 28, Chap. 2 "Property Rights" 8, 27, 39, 40, 41
Code of Laws, D. C. (1929) Title 29, Sec. 284, Chap. 12 ..... 9, 27, 28, 40
United States Constitution, Article IV, Section 1 ..... 9, 45, 46
United States Constitution, Amendment V 9, 46
Code of Laws, D. C. (1901) Sec. 966, 9, 16, 21, 30, 33, 35, 36, 42, 43, 44, 51
Virginia Code, Sec. 5113 and 5089 25
Maryland, Act 1777, Chap. 12, Sec. 1 ..... 29, 30
Code of Laws, D. C. (1929) Title 14, Chap. 1, Sec. 1, "Husband and Wife" 43, 44
Code of Laws, D. C. (1929) Title 14, Chap. 2, Sec. 30, "Husband and Wife" 43, 44
Code of Laws, D. C. (1901) Sec. 1283 ..... 29, 43
Code of Laws, D. C. (1904) Sec. 1287 30
Code of Laws, D. C. (1929) Title 14, Chap. 2, Sec. 29 41
Code of Laws, D. C. (1929) Title 14, Chap. 3, Sec. 63 44

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No.——

RUTH LOUGHRAN,
Petitioner

vs.

JOHN LOUGHRAN, JOSEPH LOUGHRAN and CHARLES LOUGHRAN, TRUSTEES OF THE ESTATE OF DANIEL LOUGHRAN, SR.,
Respondents

Petition for Writ of Certiorari to the Court of Appeals of the District of Columbia

---

To the Honorable Charles Evans Hughes, Chief Justice of the Supreme Court of the United States, and to the Associate Justices of the Supreme Court of the United States:

PART I

Statement of the Case

Petitioner herein deeming herself aggrieved by the decision of the Court of Appeals of the District of Co-

lumbia in a case in which she was the appellee, and John Loughran, Joseph Loughran and Charles Loughran, Trustees of the estate of Daniel Loughran, Sr., were appellants, rendered June 26, 1933 (rehearing denied August 8, 1933), respectfully petitions your Honorable Court to grant a Writ of Certiorari for a review of said decision and judgment, and for the reasons why such writ of certiorari should be granted respectfully shows the following:

Your petitioner, Ruth Loughran, on January 16, 1926, after being domiciled in the State of Florida for more than a year, married Daniel Loughran, Jr., one of ten of the children of Daniel Loughran, Sr., said Daniel Loughran, Sr., having previously died while domiciled in the District of Columbia, leaving surviving him the three respondents herein, his sons, and seven other children or descendants of children, inclusive of said Daniel Loughran, Jr., husband of petitioner. After her marriage in Florida to said Daniel Loughran, Jr., petitioner and her husband resided in said State for about one year and then removed to Virginia, where they acquired a new domicile, and where, said Daniel Loughran, Jr., as husband of petitioner, filed a suit for absolute divorce from petitioner in the Corporation Court of the City of Alexandria, Virginia, alleging that both parties were *domiciled* in said State. A cross-bill was filed by petitioner to said proceeding, and on November 8, 1929, the prayers of the cross-bill were granted, petitioner herein was granted a divorce *a mensa et thoro* from her husband, with alimony, which alimony was paid with reasonable regularity at the rate of Seventy Dollars ($70.00) per month until the death of Daniel Loughran, Jr., petitioner's husband, on September 6, 1931. On the death

of said Daniel Loughran, Jr., his alleged last will and testament was filed with the Probate Branch of the Supreme Court of the District of Columbia for probate. Petition for said probate set out the death of said Daniel Loughran, Jr., and the fact that he was possessed of certain real estate and personal property in the District of Columbia, subject to administration by said Court. Petitioner herein filed a protest to the probate of the last will and testament on the grounds that the domicile of decedent was in the State of Virginia at the time of his death, and also that he did not have sufficient mental capacity with which to make a valid will. Whereupon collectors were appointed by the Probate Court who took charge of the assets of said estate.

Upon the death of the father of petitioner's husband, Daniel Loughran, Sr., in 1917, the respondents herein, three of his sons, were appointed trustees under his will and vested with the authority to collect the income from the valuable holdings of real estate, of which he died possessed, worth approximately One Million Dollars ($1,000,000.00), the income from said real estate to be distributed by the respondents herein in accordance with the rights accruing to the heirs of said decedent Daniel Loughran, Sr., father of petitioner's husband, Daniel Loughran, Jr.; that said respondents, acting as such trustees, did collect and distribute the income from said properties up to and including the date of the death of petitioner's husband, Daniel Loughran, Jr., in 1931.

Subsequent to the death of her husband, Daniel Loughran, Jr., and to the appointment of collectors of his said estate, petitioner herein brought her Original Bill of Complaint (R p 2) in the Equity Court of the

District of Columbia, Equity No. 54,647, praying that said Court would require the respondents herein to pay to her, monthly, one-third of the net rentals accruing from the interests of her deceased husband in the real estate of his father, Daniel Loughran, Sr., of which said respondents were trustees, and the rents and profits of which they were charged with collecting and distributing, said bill showing her domicile and marriage in the State of Florida, her subsequent domicile and limited divorce on her cross-bill against her husband in the State of Virginia, and the fact that she was the widow of said decedent, Daniel Loughran, Jr., and entitled to statutory distributive rights as his widow.

An answer to the Complaint filed by petitioner herein in said Equity Court was duly made by said respondents, said answer setting out among other things, that prior to her marriage to her deceased husband, Daniel Loughran, Jr., petitioner herein had first married one Henry Daye, who obtained a decree of absolute divorce from her in the Supreme Court of the District of Columbia, December 12, 1924, on the ground of adultery, which said court found that she had committed with Daniel Loughran, Jr., who some years later became her husband while she was domiciled in the State of Florida. Based upon this *que* statement of fact respondents contended in the Supreme Court of the District of Columbia that because of the commission of adultery by petitioner herein prior to December 12, 1924, and notwithstanding her subsequent acquisition of a new domicile in Florida, where she became the wife of Daniel Loughran, Jr., in good faith, and notwithstanding the fact that she and her husband later were domiciled, in good faith, in the

State of Virginia, where she obtained a final decree of divorce *a mensa et thoro* against her husband because of his wrongful conduct, and notwithstanding that said divorce vindicated her said marriage and adjudicated permanent benefits in her favor thereunder, as the wife of said Daniel Loughran, Jr., nevertheless *she was not entitled to any rights or interests or distributive share in the corpus of her husband's estate or in the profits, rents or income of any properties* of her deceased husband Daniel Loughran, Jr., *because of her having committed adultery in the District of Columbia prior to December* 12, 1924, *seven years before her husband's death, September* 6, 1931, as determined in the suit wherein her first husband, one Henry Daye, was complainant.

Hearing upon the Complaint and Answer thereto was duly had before Mr. Justice Bailey of the Supreme Court of the District of Columbia, and said Justice passed an Order finding the petitioner was entitled to a widow's share from her husband's interest in the rents and profits from the real estate of his deceased father, Daniel Loughran, Sr., and passed a decree awarding same to petitioner, said Order, providing as follows:

> "This cause coming on to be heard upon the Amended Bill of Complaint, Rule to Show Cause issued herein, the Answer to the Rule to Show Cause, and the Answer to said Amended Bill of Complaint, and the same being considered, and counsel being heard, and it appearing to the satisfaction of the Court that the complainant *herein is the widow of Daniel Loughran, Jr., deceased*, and that said Daniel Loughran, Jr., deceased, *at the time of his death was seized* and possessed of

a one-tenth (1/10) undivided interest in the real estate belinging to Daniel Loughran, Sr., deceased, his father, and that there has accrued to the estate of said Daniel Loughran, Jr., deceased, and to this widow, the complainant herein, *the sum of Three Thousand Eight Hundred, Fourteen and 67/100 dollars,* ($3,814.67), *from the net rents, issues and profits* of and from said real estate and interest in the same, and that the complainant herein, under the laws of the District of Columbia, is entitled to a *'One-third part of the net rents and profits' so accrued and due,* and said complainant in open court, by her attorney of record, appearing and electing to take and receive, in lieu of other provisions for the allotment and setting apart to her of her dower interest in the real estate of her said deceased husband, Daniel Loughran, Jr., said third of said net rents and profits, so accrued, it is now, by the Court, this 17th day of September, 1932,

Ordered, adjudged and decreed that the defendants herein pay to the complainant the sum of One Thousand two hundred seventy-one and 55/100 dollars, ($1,271.55), as accrued rents, issues and profits due her as the widow of said Daniel Loughran, Jr., deceased, as her share of the net rents, issues and profits of and from the one-tenth (1/10) interest of said Daniel Loughran, Jr., in the real estate and the rents and profits thereof belonging to him, and of which he was seized and possessed at the time of his death, same being a one-tenth (1/10) undivided interest in the real estate holdings of his deceased father, Daniel Loughran, Sr., deceased, as set out in the Amended Bill of Complaint and admitted in the answer, said sum being the accrued rentals admitted by the defendants herein to be due said complainant up to September 1, 1932; and it is further

Ordered, adjudged, and decreed that from and after September 1, 1932, said defendants are di-

rected to pay monthly to said complainant, or her attorney of record, on or before the tenth day of each month a full one-third (1/3) of the net rents, issues and profits collected by them from the real estate interests belonging to the estate of Daniel Loughran, Jr., deceased, of which he was seized and possessed at the time of his death, as set out in said Amended Bill of Complaint." (Italics ours.)

Upon the foregoing decree being entered by Mr. Justice Bailey, an appeal by defendants was prayed to the Court of Appeals of the District of Columbia, where the cause was briefed and argued, and in which cause a decision of the Court of Appeals was rendered on June 26, 1933 (Rehearing denied August 8, 1933), which decision your petitioner says is *so gravely wrong and erroneous in principle, so contrary to the holdings of said court and of this Court and of the highest courts of the various States of the United States*, and so contrary to the settled and prevailing principles of equity and justice, as recognized by the Courts of this country, and so repugnant to the rules of comity between the States, and so contrary to the statutes of the District of Columbia and to the principles governing in Conflict of Laws, and so violative of the provisions of the Constitution of the United States as to imperatively require a review by this Court.

PART II

Grounds for Review by Certiorari

The Court of Appeals' decision found on Record pages 32, 33, 34 and 35 contains nine distinct errors of

law for which petitioner seeks a reversal by this Court on certiorari:

1. While recognizing the marriage of petitioner in Florida and the decree of divorce *a mensa et thoro* granted to her by the Corporation Court of the City of Alexandria, Virginia, the Court of Appeals denied to petitioner any right to share in her husband's estate, and placed a prohibitive ban upon her right to claim such interest, and puts her "without the pale of the law."

2. The Court erred in holding that it was unnecessary to deal with and interpret the legal effect of petitioner's marriage to her deceased husband, celebrated in the State of Florida, and her subsequent domicile and judicial recognition of said domicile and marriage by the Courts of Virginia.

3. The Court of Appeals further erred in holding that it was unnecessary in passing upon the merits of plaintiff's claim to consider the fact that she was a bona fide resident of the State of Florida, and legally domiciled therein at the time of the marriage and that it was unnecessary to decide the bona fides of the petitioner in securing such domicile and marriage, and the subsequent domicile in the State of Virginia.

4. The Court of Appeals further erred in holding that the case of *Olverson* v. *Olverson*, 54 Appeals D. C. 48, was decisive of the issues involved in petitioner's claim.

5. Said Court of Appeals further erred in its decision in respect to the property rights of petitioner in that its said decision has the legal effect of declaring void Title 14, Section 28 Chapter 2 of the Code of

Laws of the District of Columbia, and Title 29, Section 284 of said Code.

6. The decision of the Court of Appeals was further erroneous in that it declares void, in so far as equity is concerned, the marriage of petitioner to her deceased husband in the State of Florida, and its subsequent adjudication in the State of Virginia.

7. The Court of Appeals further erred in its holding that had the marriage been celebrated in the District of Columbia it would have been absolutely void.

8. The Court of Appeals further erred in its decision and judgment in that the legal effect of its decision is to bar plaintiff of her right of dower and to a distributive share in the personal property situated in the District of Columbia, said decision depriving plaintiff of rights guaranteed to her under Article IV of the Constitution of the United States requiring full faith and credit be given to the public acts and records of sister states, and said decision further deprived her of her property without due process of law, protected by Amendment V of the Constitution.

9. The Court of Appeals further committed error in its decision in holding that Section 966 of the District of Columbia Code has extraterritorial effect and that said section establishes a public policy, the effect of which is to bar the statutory dower of petitioner.

We now ask the Court's further consideration of the reasons upon which we ask for *certiorari*.

PART III

Brief in Support of Petition

1. *The decision of the Court of Appeals was erroneous in that it disregarded the marital status of appellant, as established in Florida and Virginia, and closed the equity Courts of the District of Columbia, to her, in contravention of her rights as her husband's widow and distributee*—and wrongfully bans her assertion of her legal and equitable rights and puts her, "*without the pale of the law.*"

No citizen of this Republic is "without the pale of the law," nor can any citizen be denied access to the courts to assert and claim his or her property rights unless such citizen comes into such court with "unclean hands," or has committed some act which works an estoppel. In this case the record and the Court's decision affirmatively show that the plaintiff came into Court with "clean hands." No facts justifying an estoppel are pleaded.

As to the "clean hands" doctrine—the Court of Appeals' decision (Record pages 34 and 35) says it is "unnecessary to waste time in considering the doctrine of 'clean hands', yet to counsel for petitioner there is *no foundation* at all for the decision of the Court of Appeals unless it is based either upon a finding of "unclean hands" against Petitioner, or that she is *estopped* to set up in 1931 and 1933 her rights as her husband's widow because of the finding of a branch of our District of Columbia Supreme Court in 1924, in a pending divorce suit against her, that she had been guilty of adultery. Of course, there is nothing in the record to show that the plaintiff came into

the equity court with "unclean hands," and the only thing in the record which could, by any stretch of judicial sanction, work an estoppel against her was, as just stated, that in another proceeding between herself and her first husband in 1924, and while she was domiciled in the District of Columbia, she was sued for a divorce, and a divorce decree was obtained against her upon a finding that she had been guilty of adultery.

Assuming that the Court of Appeals' decision, closing the doors of an equity court to petitioner, was based upon the theory that she was estopped to come into such court because of her having been found guilty of adultery during her first marriage in 1924, we bring to the Court's attention that such assumption by the Court of Appeals is utterly unwarranted in principle or by authority and we state to the Court with deep conviction and absolute confidence that there exists no weight of authority, or even respectable authority for such conclusion by the Court of Appeals.

The "unclean hands" doctrine, which might close the doors of an equity court to a complainant, *must exist as to the* case before it and being then adjudicated, and this has been held not only by the Courts generally, but by the Court of Appeals of the District of Columbia in express terms in the case of *Roote* v. *Roote*, 33 App. D. C. 398, where the Court says:

> "The rule that when a litigant comes into a court of equity, he must come with clean hands, refers only to the matter to be litigated and no other."

Surely, in view of the above statement of principle

from this Court, which is supported by abundant authority, in reported cases and in textbooks, we need not further argue to your Honors that the complainant in this case is properly in Court and entitled to have her rights adjudicated. See also *Viertel* v. *Viertel*, 99 Mo. Apps. 710, 75 S. W. 187 referred to, with approval, in the above decision, also *Levy* v. *Levy*, 16 Ill. Apps. 358, likewise referred to with approval.

It will be found that this statement of principle is based upon almost universal authority and the three cases so decided are leading cases upon the points and are upon facts much more prejudicial to the complainants in those cases than were the facts against the complainant in the cause here, where she was adjudicated a guilty party in a divorce proceeding.

In the case of *Huntzicker* v. *Crocker*; Wisconsin, 1908-115 N. W. 340 another leading case on the subject, the Court said, speaking of "Clean Hands":

> "'It does not mean that misconduct not connected with the matter in litigation and in no way affecting the opposite party will deprive a suitor of relief. Equity does not demand that its suitor's shall have led blameless and pure lives. If it did the Chancellor's Court would be little frequented. The general principle simply is that he who has been guilty of substantial misconduct "in regard to, or at all events connected with, the subject in litigation, so that it has in some measure affected the equitable relations subsisting between the two parties and arising out of the transaction," shall not be afforded relief when he comes into Court as an actor seeking to set the judicial machinery in motion. Dower is highly favored in the law," etc.

In *Harlow* v. *Carroll*, 6 App. Cas. D. C., 128, this Court said at page 133:

> "No person, even the most depraved of women, should be debarred of their just rights in courts of justice, for the reason that they are depraved, or because they have happened to commit crime. *There is no such thing as legal outlawry in our American jurisprudence.* Fallen women have, or should have, as many rights before the law as their seducers; and it is no more becoming of the legal profession to stone them in the courts of justice when they come into them, or are brought unto them, in the enforcement of their rights, than it was for the infuriated rabble to stone them in the ages of barbarism." * * * (Italics ours.)

It is true that the Court of Appeals in this case stated that it did not wish to "waste time" upon considering the question of whether or not the petitioner herein came into court for the rents and profits from her husband's estate with "clean hands," yet we have felt compelled to present that theory to this Court in order to show this Court the extreme length to which the Court of Appeals has gone in setting up new doctrines which we think so revolutionary in character as to the domestic status of the parties concerned with relation to the distribution of petitioner's husband's estate to his widow and heirs at law.

Nor is there in the record anything against complainant which could work an estoppel against her entry into the equity courts of the District of Columbia to assert her rights. The only thing suggested against complainant, and the only excuse for closing the doors of the equity courts to her given by the Court of Appeals and the only explanation for putting her "with-

out the pale of the law," in the language of the Court's decision, is based entirely upon her remarriage in Florida while domiciled there, in good faith, more than a year after her divorce in the District of Columbia, and at a time when the records of the District of Columbia showed that seven years before she asserted her rights as the widow of her husband in 1931, that she had been adjudicated the guilty party in a divorce proceeding, against her, by her first husband.

The record made in this case in the Supreme Court of the District of Columbia and the Court of Appeals admittedly showed that in 1924 while Petitioner was a resident thereof and while she was domiciled in the District of Columbia, her first husband sued her for a divorce alleging adultery, and that a finding that she was guilty of adultery was had in that case, and that her husband was divorced from her on that ground. The further facts are admittedly shown by the record to be that more than a year after she was charged with adultery in the District of Columbia she established a new domicile in Florida, and there married and lived with her second husband until they removed to Virginia, where they were domiciled together, and where she obtained a final decree of divorce against her husband on account of cruelty, with a permanent alimony allowance, which said decree was subsisting against her husband at the time of his death in September, 1931, seven years after her divorce from her first husband in the District of Columbia.

These facts are utterly without weight in the establishment of an estoppel against petitioner as the widow of her deceased husband in claiming her widow's right and her distributive share of his estate,

including rents and profits from his real estate, upon his death in 1931, when she was legally recognized as his wife by the laws of Florida and Virginia, since her marriage in Florida and her subsequent domicile in Virginia, where her marriage was judicially affirmed and established and must be recognized by the Courts of the District of Columbia, and both the marriage record and the final decree of divorce in Virginia given full faith and credit here. The Court of Appeals of the District of Columbia has utterly ignored the principles of comity and and the recognition of the verity and validity of her domicile and marriage in Florida or the domicile and final decree of divorce in Virginia by utterly repudiating the universally recognized principles that a marriage good where legally celebrated is good everywhere, and that the rights of a widow to a legal marriage in one jurisdiction must be recognized against his property in any other jurisdiction.

From the case of *Oscanyan* v. *W. R. Arms Co.*, 26 Law Ed., 546, 103 U. S. 277, opinion by Mr. Justice Field, we quote the following:

> "The general rule undoubtedly is that the validity of a contract is to be decided by the law of the place where it is made, unless it is to be performed in another country; but to this, as to all general rules, there are exceptions, and among these Story mentions contracts made in a foreign country to promote or reward the commission of crime, to corrupt or evade the due administration of justice, to cheat public agents or to affect the public rights, and other contracts which in their nature are founded in moral turpitude, and are inconsistent with the good order and solid interest of society. "All such contracts," he adds, "even

> although they might be held valid in a country where they are made, would be held void elsewhere, or at least ought to be, if the dictates of Christian morality or even of natural justice are allowed to have their due force and influence in the administration of international jurisprudence." Story, Confl. L., sec. 258."

The Court of Appeal's decision attempts to establish the principle that Section 966 of the Code of Laws of the District of Columbia declares a public policy which gives the courts of the District of Columbia the right to treat as invalid and void any marriage in violation of the terms of said Section, whether the same occurs while the parties are domiciled in another jurisdiction, whether the same is celebrated in good faith in consonance with all the applicable laws of such jurisdictions and/or whether or not the parties thereto are accepted as legally married by the jurisdiction of their new domicile and/or the jurisdiction of any other domicile to which they may subsequently remove. To support this contention, which counsel for petitioner thinks amazing, the Court of Appeals in this cause approves its own decision in the case of *Olverson* v. *Olverson*, 54 App. D. C. 48, and holds said decision to be decisive of this case, and to be so definitely decisive of this case as to close the doors of the equity courts of this jurisdiction to petitioner, to put her "without the pale of the law" and to bar her forever from asserting any rights in equity to her widow's interest in her husband's estate, or to any distributive share therein, although she lived with her deceased husband in Florida and Virginia, was recognized as his wife and was supported by him continuously for seven years before he died.

2. The Court of Appeals further committed grave error in its decision against petitioner in said cause when it held that it was unnecessary for that Court to deal with and interpret the legal effect of the petitioner's marriage to her deceased husband celebrated in the State of Florida and her subsequent domicile and the judicial recognition of her said domicile and marriage by the Courts of Virginia.

Under date of March 10, 1930, The American Law Institute issued its "Restatement of the Law of Conflict of Laws Proposed Final Draft No. 1" in which, under the title "Marriage," Topic A, Section 129, p. 170, the law governing the validity of marriage is declared. Counsel understands this Restatement to be the consensus of view of the great jurists engaged in the monumental work of giving to the judiciary and the legal profession a thoroughly studied and thought-out definition or accepted statement of what domestic and property rights are as settled by the great weight of authority in this country. Quoting from the above Restatement of the Law, Section 129, we find the following:

> "SECTION 129—Law Governing Validity of Marriage—EXCEPT AS STATED IN SECTION 140, A MARRIAGE IS VALID IF THE REQUIREMENTS OF THE MARRIAGE LAW OF THE STATE WHERE THE MARRIAGE TAKES PLACE ARE COMPLIED WITH.
>
> (a) Section 140 applies to polygamous, incestuous and abhorrent marriages.

Even before the above Restatement of the Law of Marriage, and its attendant privileges and rights, the Courts had, with practical unanimity, reached the

same conclusion as the distinguished lawyers who prepared the Restatement, and many of the authorities so declaring the law were briefed and cited to the Court of Appeals in this cause, but were apparently given inadequate consideration, or were deemed inapplicable in the District of Columbia, because of the decision by the Court of Appeals theretofore rendered in the case of *Olverson v. Olverson*, 54 App. D. C. 48, hereinafter referred to and distinguished.

In the American Law Institute Restatement of the Law as to marriage and divorce, we find further:

> "SECTION 137 p. 176. Evasion of Requirements of Domicil—
>
> IF THE REQUREMENTS OF THE LAW OF THE STATE OF CELEBRATION ARE COMPLIED WITH, THE MARRIAGE IS VALID, EXCEPT UNDER THE CIRCUMSTANCES STATED IN SECTION 140, (Polygamous, incestuous, and Abhorrent Marriages), ALTHOUGH THE PARTIES TO THE MARRIAGE WENT TO THAT STATE IN ORDER TO EVADE THE REQUIREMENTS OF THE LAW OF THEIR DOMICIL."

In Section 138 p. 177 of the Restatement of the Law of Conflict of Laws, we find the following:

> "Sec. 138. Marriage After Divorce—
> IF, BY A DECREE OF DIVORCE VALIDLY GRANTED IN ONE STATE, ONE PARTY IS FORBIDDEN FOR A CERTAIN TIME OR DURING HIS LIFE TO MARRY AGAIN, AND HE GOES INTO ANOTHER STATE AND MARRIES ACCORDING TO THE LAW OF THAT STATE, THE MARRIAGE IS VALID, AND WILL BE SO RECOGNIZED EVEN IN

THE STATE IN WHICH THE DIVORCE WAS GRANTED, EXCEPT AS STATED IN SECTION 140." (Polygamous, incestuous and abhorrent marriages.)

The above sections merely state the dominant weight of authority which was so widely recognized in our various jurisdictions as to constitute a body of law readily presented in one paragraph and it is confidently stated here that there is no respectable weight of authority to the contrary in the jurisdictions of this Country. We bring to the Court's attention further, Section 139 of the Restatement, p. 177, as follows:

"Section 139. Marriage After Parties to Divorce Both Forbidden to Remarry—

IF, BY A DECREE OF DIVORCE VALIDLY GRANTED IN ONE STATE, EACH PARTY IS FORBIDDEN FOR A CERTAIN TIME OR DURING THE LIFE OF THE OTHER PARTY TO MARRY AGAIN, AND ONE PARTY GOES INTO ANOTHER STATE AND MARRIES, BEING PERMITTED TO DO SO BY THE LAW OF THAT STATE, THE MARRIAGE IS VALID, AND WILL BE SO RECOGNIZED EVEN IN THE STATE WHERE THE DIVORCE WAS GRANTED, UNLESS

(1) The time named is a time within which an appeal to a higher court may be taken; or
(2) The statute which forbids the parties to marry is expressly made applicable to the marriage of domiciliaries in another state; or
(3) The marriage is invalid under the provisions of Section 140." (Polygamous, Incestuous and Abhorrent Marriages.)

We are not bringing forward applicable authorities

under each statement of the laws' Restatement above quoted from because many such authorities have already been cited herein under another heading, and further because the principles are so uniformly recognized that it seems an act of supererogation to further urge their consideration upon this Court.

3. *That the Court of Appeals further committed grave error in holding that it was unnecessary, in passing upon the merits of plaintiff's claim to a share of the rents and profits of her husband's real estate to consider the fact that when she was married to her deceased husband she was a bona fide resident of the State of Florida, and legally domiciled therein; and further committed error in holding that it was immaterial and irrelevant to her right to share in her husband's estate in the District of Columbia that she, following her marriage in Florida, acquired a new domicile with her husband, in good faith, in the State of Virginia, maintained same to the date of her husband's death, and subsequently thereto; and that while so domiciled in Virginia, she secured a final decree by a competent court of said State, holding that she was the duly wedded wife of said decedent, entitled to permanent benefits under a decree of divorce a mensa et thoro because of his misconduct, and therefore entitled to her legal rights as his widow and a distributee of his estate upon his death.*

The Court of Appeals in its decision and judgment said, among other things.

> "It is unnecessary for us to concern ourselves with the legality of the Florida marriage in that State, or with the subsequent divorce proceedings in the State of Virginia, since the disposition of

> the case is dependent entirely upon the law of the District of Columbia. Insofar as the law of the District is concerned, the marriage between plaintiff and Daniel Loughran, Jr., in Florida, if performed in the District of Columbia, would be absolutely void, and the plaintiff being the offending party against the law of the District, is in no position to enforce any claim against the estate of Daniel Loughran, Jr., growing out of the marriage in Florida.
>
> * * * It is unnecessary to waste time in considering the doctrine of 'clean hands' as applicable to this case. Plaintiff, by her own unlawful conduct has placed herself without the pale of the law, and annot be heard in a court of equity to take advantage of her own wrong."

The above statement contains errors of law as follows:

(a) The Court of Appeals should have concerned itself with the legality of the Florida marriage in that State.

(b) The Court of Appeals should have considered and given great weight to the subsequent final decree of divorce in the State of Virginia.

(c) The entire disposition of this case is not dependent upon the laws of the District of Columbia, but

(d) The marriage here in question would not have been absolutely void if it had occurred in the District of Columbia, (though we deem this immaterial to a decision of this case) such marriage would only have been voidable, and

(e) Plaintiff is in a position to enforce her claims

against the estate of her deceased husband, "growing out of the marriage in Florida."

Upon what theory may it be said that a marriage of two people domiciled in the State of Florida, who established their domicile there in good faith and there resided for about three years, and thereafter removed to the State of Virginia, and acquired a new domicile where they resided as husband and wife for a long period of time, and where they were finally divorced in a suit for divorce by the deceased husband against petitioner, to which petitioner filed a cross-bill, and in which suit his bill was dismissed and her cross-bill was maintained, are of no concern to the Courts of the District of Columbia?

Assuming again that the Court of Appeals correctly stated the principles of law governing domestic relations in the District of Columbia in the Olverson case (which we earnestly say it did not), that case, in no sense, should rule this case, since, as hereinbefore stated, there is no similarity of facts and no analogy in principle, and no parallel in the violation of the duties of litigants done within this District upon which the Olverson decision was based, the petitioner in this case having married in Florida, while domiciled therein, and having left the District of Columbia, in good faith, and not for the purpose of evading its laws, as were the facts in the Olverson case.

It was the duty of the Court of Appeals to follow the Supreme Court of the District of Columbia, and recognize the Florida marriage as it was without any legal infirmity. Likewise, it was that Court's duty to recognize the divorce proceedings in Virginia for the same reasons. Since the laws of the District of Columbia have not declared a public policy contrary

either to the domicile and marriage in Florida, and to the subsequent domicile and divorce in Virginia, only the declaration of a public policy condemnatory of marriages such as that celebrated in Florida and adjudicated in Virginia could give authority to the Court of Appeals to put a bann upon petitioner's marriage and her rights as the widow of her husband, and to put her beyond the pale of the law, as, by its decision, it has undertaken to do.

To render void or legally invalid petitioner's marriage in Florida, and her subsequent decree of divorce in Virginia, it would be necessary for Congress to declare that a marriage under the conditions set out in this record was offensive to the policy of Congress, the law making body of the District of Columbia, and the legislature would further have to state that any marriage so celebrated would be legally void or invalid in the District of Columbia.

Again referring to the Restatement of the Law by the American Law Institute we find (Section 142, p. 181):

> "Section 142. Marriage Contrary to Public Policy—
>
> IF ANY EFFECT OF A MARRIAGE VALIDLY CREATED BY THE LAW OF ONE STATE IS DEEMED BY THE COURTS OF ANOTHER STATE SUFFICIENTLY OFFENSIVE TO THE POLICY OF THE LATTER STATE, THE LATTER STATE WILL REFUSE TO GIVE THAT EFFECT TO THE MARRIAGE.
>
> Comments:
>
> (a) The action of the state in refusing to give

effect to a marriage on the ground stated in this Section does not deny the validity of the marriage, but precludes the enjoyment within the state of some particular right incident to the marriage.

(b) The mere fact that the marriage is contrary to the statute of the forum does not make it so offensive to policy as to be refused enforcement.

(c) It is ordinarily offensive to the law of a common-law state to allow cohabitation, incestuous by its laws, though the parties were validly married in a state which permitted the marriage."

Section 966 of the Code of the District of Columbia, hereinafter quoted, establishes no public policy against a remarriage of a guilty party to a divorce proceeding, said Section merely *prohibits* such remarriage. The prohibition contains no penalty, and declares no policy, and the Court of Appeals is without authority to create by judicial fiat a public policy not established by Congress. It is the legistative authority only that can establish such public policy, and it has not done so, and the Courts may not do so without legislative authority.

It is only fair to the Court of Appeals and to this Court to say that there is a line of authorities which holds that if and when a person domiciled in one State removes to another for the purpose of marrying "with no intention of changing their citizenship or residences," and are married, and return to the original domicile that such marriage will not be recognized if it would have been refused recognition in the place of domicile. Such is the holding in the case of *Hef-*

linger v. *Heflinger,* 136 Va. 289, but that decision is based upon Sections 5113 and 5089 of the Virginia Code, which positively declares that marriages so circumstanced should be null and void, and that marriages of parties evading the restrictions of Virginia law, while domiciled in Virginia, should be governed by the laws of Virginia. In Virginia there was a legislative policy declared and the Court of Appeals merely declared that policy in the case quoted from. The same general statement of principle upon facts and conditions somewhat similar have been stated by the Courts of other jurisdictions as follows:

Stull's Estate, 183 Pa. 625—39 L. R. A. 359.
Pennegar v. State of Tenn. 87 Tenn. 244; 2 L. R. A. 203.
Williams v. Oates, Admn. 27 N. C. 535.
Hall v. Baylous, 153 S. C. 292; 69 A. L. R. 527.
Catherine Gabiesco, 119 La. 44 So. 438, 11 L. R. A. (N.S.) 1082.
Lanham v. Lanham, 117 N. W. 787—17 L. R. A. (N.S.) 804.
Estate of Frank E. Smith—17 L. R. A. 573.
Eaton v. Eaton, 60 L. R. A. 605.
Crawford v. State of Mississippi, 35 L. R. A. 224.
Peerless Pacific Co. v. Burchard, 1917 (C)-L. R. A. 353.
Sammons v. Sammons, 46 A. L. R. 39 (1918).

However all of these cases show that the party charged with infidelity in various jurisdictions wilfully abandoned that jurisdiction in order to marry elsewhere, *in defiance of its laws,* and returned to the domicile in the same attitude. Nor do any of the jurisdictions have a statute such as that in the District

of Columbia. They are far more rigid, and express definite policies of the State and prohibit remarriage of a person found guilty of adultery, *as a policy of public morals in support of the good order of society.* No such policy is declared by the District statute.

In each case above cited, according to our analysis, the decision is distinguishable from the case at bar not only upon the grounds above stated, but because of differing facts and legal rights. In none of them was it attempted to deprive the widow of a deceased person, to whom the offending party in a divorce proceeding had remarried in another jurisdiction and subsequently become domiciled in a third jurisdiction of her rights as widow and/or next of kin: In none of the cases did the Court hold that remarriage outside of the jurisdiction where the divorce was obtained would effect the descent or distribution of property under the statutes of distribution, or of descent. Even if they had, such holding would have contravened the constitutional safeguards of guaranteeing to citizens of one State all rights, privileges, and immunities given to citizens of other States.

It appearing from the record in this case, therefore, that Congress has declared no public policy condemnatory of marriages such as that of petitioner, and has merely passed a provision prohibiting the same without penalty, the marriage of petitioner occurring in good faith in Florida while she was domiciled there must be recognized as valid here, and likewise the domicile of the petitioner in Virginia, and the divorce from her deceased husband there must be held to be a subsisting adjudication of said marriage, and be recognized here and given full faith and credit

in the disposition of the property of decedent's husband fully recognizing her right as his widow thereto and therein.

We want to state here, with all possible emphasis, that this record does not warrant the decision of the Court of Appeals herein rendered since said decision invalidates the laws of the District of Columbia, as to the rights of a widow, whose legal marriage, in good faith, in the State of Florida, is conclusively established and legally admitted by the pleadings, and whose legal status, according to the pleadings, was subsequently judicially established by the Courts of the Commonwealth of Virginia.

We are quoting hereinafter sections of the District of Columbia Code governing the rights of petitioner as the widow of her deceased husband to a share and distributive interest in his estate. Title 14, Section 28, Chapter 2, subject "Property Rights," Code of Laws of the District of Columbia defines dower in the District of Columbia, said section declaring:

> "*A widow*, after the death of her husband, * * * for her dower shall be assigned unto her the third part of all the lands of her husband, which were his during coverture, except she were endowed of less at the church door."

From Title 29, Section 284, Code of Laws of the District of Columbia, we take the following:

> "Title 29—Section 284—
>
> Same; when spouse entitled to one-half—*If there be a widow* or surviving husband and no child or descendants of the intestate, but the said intestate shall leave a father or mother, or broth-

er or sister, or child of a brother or sister, the widow or surviving husband shall have one-half." (Italics ours.)

Notwithstanding the above sections of the Code of Laws of the District of Columbia, the decision of the Court of Appeals herein, in legal effect, has absolutely deprived petitioner of any right (a) to enter the equity courts of this District to claim her dower as the widow of her husband; (b) to demand an accounting of appellants who have collected the rents from her husband's real estate, (c) and/or to obtain any benefits whatever from her husband's estate. By said decision of the Court of Appeals also petitioner has been, in legal effect, barred from claiming from the estate of her deceased husband any interest in the properties left by him in the District of Columbia.

It is unnecessary to cite authorities to this Court that it is beyond the power of the court to legislate; that it may not repeal legislation, and that its right to interpret is based upon reasonable deductions and analysis. We submit, however, that in this case, its decision has been effective to destroy utterly the dower and distributive rights of petitioner as the widow of her husband, by destroying all remedy guaranteed to her by law to seek and possess the same. Surely this cannot be done, and surely this Court will recognize the gravity of such action, and certify the record in order that the principles so universally applicable to the property rights of husband and wife may be applied in this jurisdiction, as prayed for by petitioner.

The holding of the Court of Appeals in the instant case is contrary to its own holdings on the same

subject.

In *Tyler* v. *Andrews*, 40 App. Cas. D. C., 100, there was a contest between two women, each claiming to be the widow of Benjamin Andrews, testator, leaving personalty which was located in this District. Laura Tyler, the appellant, was the step-daughter of the decedent. The latter, after a marriage with her mother, resided with his wife in Maryland. After the mother's death, the decedent, surviving husband, who was prohibited under a Statute of Maryland (Act 1777, Ch. 12, Sec. 1) from marrying his step-daughter in Maryland, nevertheless married her in Ohio, and thereafter they returned to and resided in Maryland, as husband and wife. Section 1283 of Code, D. C. (same as Md., Act 1777, Ch. 12, Sec. 1) provided that the marriage of a man with his widow's daughter is prohibited in the District of Columbia, and is absolutely void *ab initio* without being so decreed, and its nullity may be shown in any collateral proceedings. Section 1284 Code, D. C., provided that any marriage (including marriage between a man and his step-daughter) set forth in Section 1283 Code D. C. may also be declared to be null and void by judicial decree.

After the decedent married appellant Laura Tyler, he later married the appellee, no divorce having ever been obtained from Laura Tyler. The man died leaving personal property in this District, and each woman claimed to be his widow. This court, on the authority of the Maryland decisions, notwithstanding the fact that if the marriage of the testator with his step-daughter had occurred in the District of Columbia (which would have been in violation of section 1283 Code, D. C., *supra*), and that notwithstanding the fact that the marriage of the parties, if it had occurred in

Maryland (which would have been in violation of the Maryland statute) (Act. 1777, Ch. 12, Sec. 1., *supra*) recognized the validity of the marriage that had occurred between the testator and his step-daughter in Ohio, and reversed the lower court, and held that Laura Tyler, as widow, was entitled to her statutory share in her husband's estate, located in this District.

We submit that the Tyler-Andrews case is decisive of the case at bar.

See to same effect, *Stevenson* v. *Gray*, 17 B. Monroe, (Ky.) 193.

In *Abramson* v. *Abramson*, 60 App. Cas. D. C. 119, the Court held that a woman's remarriage in violation of an Illinois statute, within three months after obtaining divorce, not having been attacked before the enactment of a repealing and curative act, was valid in this District, reaffirming the Maryland cases upon the subject, and also *Tyler v. Andrews*, 40 Apps. D. C. 100.

We submit that the appellee did not offend against the law of the District because she did not remarry in the District of Columbia, and because she did not go out of the District and remarry to evade the law of this District, whilst having and retaining her domicile in the District of Columbia (Sec. 1287 Code D. C.); and also because the law of this District (Sec. 966 Code D. C.) has no extra-territorial effect, and, further, because Section 966 does not deny dower to a widow, if, whilst *bona fide* domiciled in another jurisdiction she remarries after a decree against her in a divorce suit.

No right guaranteed by law is more zealously or jealously guarded than the rights of a widow, and it

is beyond the power of any court to so interpret the law as to deprive a widow of her right in her husband's estate after she has legally married him, unless her marriage violates some high moral concept of the people, or is a grave breach of the moral senses of a Christian country as to be revolting to its citizens. These rights have been recognized by our highest courts, including the Supreme Court of the United States, during the entire history of our country. In our reading of the authorities of many States, and particularly in our examination of Federal authorities we have found cited repeatedly throughout the country the case of Ponsford v. Johnson, 2 Blatchford, Southern District N. Y. 1847. This has been a leading case on the subject of the rights of a widow where there has been a marriage involving a party found guilty of adultery in a State and the reasoning and the ethics of the decision have been followed with great unanimity by the Courts. In this case the plaintiff Ponsford claimed a distributive share of personal property left by her husband, claiming as his widow. Ponsford had previously been absolutely divorced in New York from his first wife on the ground of his adultery. By statute in New York it was unlawful for the defendant so convicted of adultery to marry again during the lifetime of the complainant. While plaintiff and Ponsford were residing in New York, they went over into New Jersey and were there married. Plaintiff claimed under the New York Statutes. Her claim was refused her on the ground she was not the widow of Ponsford. Held: She was entitled to share in his estate.

In the instant case the widow is denied the right to

enter the equity courts to assert her right to a widow's distributive share of her personal estate.

In deciding the Ponsford case the Court said:

> "1. We consider that, as a general principle, the capacity or incapacity to marry depends on the law of the place where the marriage is contracted, and not on that of the domicile of the parties. This principle need not be asserted as absolute in all cases. Incest, polygamy, and practices outraging the moral sense and usages of civilized nations, may be excepted from the rule, without impairing its justness and efficacy."
>
> "2. We regard the decree of divorce pronounced by the Court of Chancery of the State of New York to be, in its purport and by force of the statute of the state, an absolute dissolution of the marriage contract as to both parties, and that the disqualification or disability to marry declared by the statute, attached to Ponsford, by way of penalty, only within the State of New York, and did not incapacitate him from contracting a sound and valid marriage in the State of New Jersey, where the same disability did not exist."
>
> "3. We think that the validity of the marriage in New Jersey would not have been affected if both parties had resorted there to evade the prohibitory law of New York. And, clearly, where one party was innocent and ignorant of such purpose, the mala fides of the other could not impeach the marriage, if it was lawful in all other respects."

Surely, in view of the above statement of principle, which has been so often approved, confirmed and ratified by the Courts of the Nation, as has been hereinbefore and will be hereinafter more fully set out, it is strange, almost incredible, how the Court of Appeals

could have reached the decision it did in this case, to close the doors of the equity courts against the plaintiff.

4. *That the Court of Appeals further erred in holding that the case of Olverson v. Olverson,* 54 App. D. C. 48 *was and is decisive of the issues involved in petitioner's claim to a right in her husband's estate, her rights being distinguishable from those of the plaintiff, in the Olverson case upon every material point at issue in that case, both in law and fact.*

Every principle which justified the Olverson case is absent in the present case.

The party seeking relief in the Olverson case was found by the court to have *deliberately left* the District of Columbia for the purpose of marrying *while she was legally domiciled in the District of Columbia*, and further found that she thereupon returned to the District with the defendant Olverson. This brings the case into one of the exceptions of the general rule that if there is a deliberate evasion of the laws of the District *by a resident thereof*, and if a fraud is practiced on the court in that very matter, that in such case, the court may deny that party a divorce. This is based upon, not only the ground of fraud upon the court and evasion of local laws, but also because the suing for a divorce from the marriage involves *the very matter in controversy*,—the marriage contract. No such issues are involved here.

On the other hand, the decision in the case of Olverson v. Olverson, instead of holding the Maryland marriage void, relieving the parties from the bonds of matrimony by reason of Section 966 of the Code, held that they could *not be so relieved* and denied the plaintiff a divorce from the defendant. In other words, hav-

ing assumed the legal contract with the defendant, the court held that she was bound by it, notwithstanding the cruelty and non-support of the defendant.

This court will note that in its consideration of the Olverson case it found that the appellant in that case *deliberately* set at naught the District statute and then asked the Court to *relieve* her of the obligations of her marriage, *which she had wilfully* and *wrongfully assumed*. It was because of the wilful acts of appellant, which do not and are not claimed to exist here, that the Court found against appellant in the Olverson case, and such finding was also based upon the effort of appellant in that case to secure a release from the obligations of her marriage vows within the District of Columbia, where she resided, which obligations she had wilfully and wrongfully assumed by deliberately flaunting her remarriage in Maryland while she was domiciled here, in the face of our Courts in violation of its decree. This *flaunting* or violation of the decree of this Court was a wilful crossing the District line for the purpose of remarriage in order to avoid the terms and conditions of the local law. No such fact exists in the present case, nor is such fact even contended for by appellees. The *good faith* of the removal of petitioner to another jurisdiction, her subsequent marriage *in good faith*, and her subsequent residence in Virginia, *in good faith*, are not questioned by the record.

Treating the Olverson case as the governing authority for the decision herein by the Court of Appeals of the District of Columbia, it should be stated that that case holds, in legal effect, that two people while domiciled in the District of Columbia, one of whom has been found guilty of adultery in a previous case in the Dis-

trict of Columbia, may not deliberately flaunt the laws of the District of Columbia, *while so domiciled* therein, by going to another jurisdiction for the purpose of evading said laws, and there marrying and then immediately returning to take up their domicile in this District in defiance of the local law. If *this* case had any of the vices of the Olverson case it might be argued that a policy should be declared by our Courts against such marriages. However, the settled opinions of the Courts warrant even marriages of this character, and recognize them as valid in the distribution of property in the jurisdictions affected, and there is no declaration of public policy by the Congress of the United States against the recognition of such marriages here. The only legislative declaration of policy affecting marriages of divorced persons, one of whom has been found guilty of adultery is Section 966 of the Code of Laws of the District of Columbia, reading as follows:

> "Sec. 966. CAUSES FOR A DIVORCE A VINCULO AND FOR DIVORCE A MENSA ET THORO.—A divorce from the bond of marriage may be granted only where one of the parties has committed adultery during the marriage: *PROVIDED, That in such case the innocent party only may remarry, but nothing herein contained shall prevent the remarriage of divorced parties to each other.* * * *". (Italics ours).

In the Olverson case the Court of Appeals held that a person guilty of adultery, that is, the person other than the innocent party to a divorce proceeding, could not go into Maryland, deliberately endeavoring to evade and avoid the application of the District laws to his marriage contract, and while in Maryland tempo-

rarily and not domiciled there, be married there, and then immediately return to the District of Columbia, his domicile, and then have his Maryland marriage recognized.

The only warrant for the Court's decision in the Olverson case was based upon the theory of the court that by enactment of Section 966 of the Code, there was brought into existence a public policy, a declaration of public morality, which put a ban upon the marriage anywhere, under any conditions, of a person guilty of adultery in a divorce proceeding of a person domiciled in the District of Columbia at the time of the marriage, but who evaded the application of the District laws by deliberately going beyond the confines of the District and marrying elsewhere, and then returning and taking up a continuing domicile within the District.

Even if the facts in this case had been at all analogous to the facts in the Olverson case, it is earnestly submitted that even then the marriage would have been valid in the District of Columbia, and that the Courts of the District of Columbia were under a duty to recognize it in the distribution of the property of petitioner's husband in this jurisdiction. This is true because nothing can establish a public policy against the validity of a marriage beyond the jurisdiction of the District of Columbia of a guilty party to a divorce proceeding, except the Congress of the United States by due legislative enactment, and it cannot do so unless by express terms declaring such remarriage a positive violation of public morality and against public decency.

Section 966 of the Code of laws of the District of Columbia above quoted provides that the innocent

party only may remarry, but carries no penalty and makes no declaration that any subsequent remarriage by the guilty party shall be void, and makes no declaration of public policy, to wit: that the marriage, if celebrated outside the jurisdiction, will not be recognized subsequently within the jurisdiction. Without such declarations in our statutes, declaring a fixed public policy and a statutory requirement of non-recognition, then all of the authorities require recognition, and the question of such recognition has been so well settled as to be beyond serious debate.

Quoting from 5 Ruling Case Law, Section 84, Title, "Conflict of Laws," we find the following:

"84. Statutes Prohibiting Remarriage after Divorce.—It is almost *universally conceded that statutes prohibiting the guilty party to a judgment of divorce from marrying again, either for a certain period*, or while the other party to the former marriage lives, *are without effect outside of the territorial limits of the prohibiting state*. Since such a *prohibition* is in the nature of a penalty it does not apply to divorces granted *outside of the state*, nor does it carry any *disability* beyond the borders of the state where in force. Consequently where the parties to the subsequent marriage are not at the time thereof *domiciled* in the state where the divorce was rendered, the statutory prohibition *against remarriage does not apply if*, notwithstanding such *prohibition*, the first marriage may be regarded as actually ended and the *remarriage is celebrated in another state*. There is a decided conflict of authority, however, upon the question whether the courts of the state which has enacted such a statute merely in general terms prohibiting such remarriage, will *recognize as valid* the remarriage of such a person

> occurring out of the state *while he was still domiciled within the state*. The weight of authority is that if the marriage *is valid according to the lex loci*, it will be upheld even by the courts of the state *which enacted the statute, and in which the parties to the remarriage are domiciled*, and even though the parties went out of the state to solemnize the second marriage, for the express purpose of evading the *law of the domicil and of the forum*." (Italics ours).

We deem it settled beyond serious discussion that whatever may have been the cause for a divorce of a citizen of one jurisdiction, if that citizen removes, in good faith, to another sovereignty, and acquires a new residence, *in good faith*, and then subsequently marries in that jurisdiction *in good faith*, and removes to another sovereignty, where she obtains a final decree of divorce, *in good faith*, that in such cases her marriage and divorce must be recognized not only in every other State or jurisdiction, but also in the one in which she was originally divorced. Such is the settled doctrine by the decisions in England and in practically all of the States of the Union. Quoting from 19 *Corpus Juris, Section* 21, *Page* 463, we find the following:

> "Section 21. *What Law Governs.* If a marriage was valid in the state in which it was contracted, its validity will be recognized in another state so as to entitle the woman to dower in lands in the latter state, although the marriage would not have been valid if contracted in such state."

Supporting the above quotation from Corpus Juris are the following citations of authorities, all of which are well considered, thoroughly seasoned in their

reasoning, and we think conclusive upon the propositions:

Putnam v. Putnam, 8 Pick. (Mass.) 433; Dickson v. Dickson, 1 Yerg. (Tenn.) 110, 24 AmD 444.

Ky.—McIlvain v. Scheibley, 109 Ky. 455, 59 SW 498, 22 KyL 942; Stevenson v. Gray, 17 B. Mon. 193.

Md.—Fornshill v. Murray, 1 Bland 479, 18 AmD 344.

Mass.—Medway v. Needham, 16 Mass. 157, 8 AmD 131.

N. J.—Smith v. Smith, 52 N. J. L. 207, 19 A 255.

N. Y.—Van Voorhis v. Brintnall, 86 N. Y. 18, 40 AmR 505; Smith v. Woodworth, 44 Barb. 198; Fenton v. Reed, 4 Johns 52, 4 AmD 244.

N. C.—State v. Ross, 76 N. C. 242, 22 AmR 678.

Eng.—Warrender v. Warrender, 2 Cl. & F. 488, 6 Reprint 1239; Lacom v. Higgins, D. & R. 38, 16 ECL 425; Potter v. Brown, 5 East 124, 102 Reprint 1016; Scrimshire v. Scrimshire, 2 Hagg. Cons. 395; Dalrymple v. Dalrymple, 2 Hagg. Cons. 54, 17 ERC 11; Connelly v. Connelly, 14 Jur. 437, 2 EngL&Eq 570; Hunter v. Potts, 4 T. R. 182, 100 Reprint 962.

Each of the above authorities were set out in detail in our brief in the Court of Appeals of the District of Columbia, and no effort was made by counsel for the defendants in this cause in that Court to except to them or to cite contrary authorities.

5. *Said Court of Appeals further erred in its said decision with respect to the property rights of petitioner in that its said decision has the legal effect of unconstitutionally, inequitably and illegally declaring void, Title* 14, *Section* 28, *Chapter* 2 *of the Code of*

Laws of the District of Columbia, entitled "Property Rights," and also Title 29, Section 284 of said Code, which sections provide for distribution of the estate of a deceased husband to his heirs at law, including his widow.

The sections from the District of Columbia Code defining the rights of a widow are as follows:

Title 29, Chapter 12, Section 284 (The Code of D. C. 1929)—

"284. Same; when spouse entitled to one-half.—If there be a *widow* or surviving husband and no child or descendants of the intestate, but the said intestate shall leave a father or mother, or brother or sister, or child of a brother or sister, the *widow* or surviving husband shall have one-half. (Mar. 3, 1901, 31 Stat. 1249, c. 854, *sec* 376; Apr. 19, 1920, 41 Stat. 563, c. 153.)" (Italics ours.)

Sections 28, 29, Title 14, Chapter 2 (The Code of D. C. 1929)—

"28. Dower, right of quarantine; dower defined.—A *widow*, after the death of her husband, incontinent, and without any difficulty, shall have her marriage and her inheritance and shall give nothing for her dower, her marriage, or her inheritance, which her husband and she held the day of the death of her husband, and she shall tarry in the chief house of her husband by forty days after the death of her husband, within which days her dower shall be assigned her (if it were not assigned her before) or that the house be a castle; and if she depart from her castle, then a competent house shall be forthwith provided for her, in the which she may honestly dwell, until her dower be to her assigned, as it is aforesaid; and she shall have in the meantime her reasonable estovers of

the common; and for her dower shall be assigned unto her the third part of all the lands of her husband, which were his during coverture, except she were endowed of less at the church door. (9 Henry 3, c. 7, sec. 1, 1225; Kilty's Report, p. 205; Alex. Brit. Stat. 1; Comp. Stat. D. C. p. 36, sec. 164)." (Italics ours.)

"29. Same; equitable titles.—A *widow* shall be entitled to dower in lands held by equitable as well as legal title in the husband at any time during the coverture, whether held by him at the time of his death or not, but such right of dower shall not operate to the prejudice of any claim for the purchase money of such lands or other lien on the same. (Mar. 3, 1901, 31 Stat. 1375, c. 854, sec. 1158.)" (Italics ours.)

A very full discussion of the rights of a widow to dower and to a distributive interest in her deceased husband's estate has already been indulged under Point No. II of this brief, and reference to such discussion is hereby made, the same being found upon pages 18 through 20, inclusive.

6. *That the decision of the Court of Appeals was gravely erroneous further in that it declares void, in so far as equity is concerned, the marriage of petitioner and her deceased husband in the State of Florida and its subsequent adjudication in the State of Virginia. Said Court of Appeals, by its said decision, refused to recognize or chose to ignore the admittedly legal validity of plaintiff's marriage in said State of Florida, and her admittedly legal domicile therein at the time thereof and subsequently thereto, and likewise treated as immaterial the legal effect and validity of her subsequent domicile in the State of Virginia, as well as the final judgment of the Courts of said State.*

that she was legally married to her husband and entitled to the benefits, privileges and advantages of such marriage, (R. p. 13-14), *which said decree was subsisting and effective to the very date of the death of her deceased husband; that each and all of said holdings in the said decision of the said Court of Appeals were and are in direct violation of the universally recognized rule of comity between the States of the American Union and the universally accepted principle that the Courts of one jurisdiction shall give full faith and credit to the legal and valid acts and determinations of the competent courts and the public records of other jurisdictions.*

The authorities quoted throughout this brief support fully the above statement in Point No. 6, and it is believed that every principle declared therein has been the established law of the District of Columbia, as well as in the States generally until the utterance of the Court of Appeals in this cause, completely reversing said principles and stating a judicial position utterly out of harmony with its own previous decisions herein referred to and quoted from under Point No. 8, and the decided cases throughout the country.

7. The Court further committed error in its assumption that if the marriage had been contracted in the District of Columbia it would have been absolutely void.

For the benefit of the Court, Section 966 of the Code of Laws of the District of Columbia is again herewith set out:

"Sec. 966. CAUSES FOR DIVORCE A VINCULO AND FOR DIVORCE A MENSA ET THORO.—A divorce from the bond of marriage

may be granted only where one of the parties has committed adultery during the marriage: PROVIDED, That in such case *the innocent party only may remarry*, but nothing herein contained shall prevent the remarriage of divorced parties to each other. * * *" (Italics ours.)

Nowhere in the above quotation is there found any suggesting that a marriage contracted in violation of the above would be absolutely void, yet the Court of Appeals has read that provision into the statute. When read in connection with Section 1283, (Title 14, Sec. 1, Chap. D. C. Code, 1929) from which we quote as follows:

"Section 1, Title 14, Chapter 1 (The Code of D. C. 1929)—

"Section 1. Prohibitions.—The following marriages are prohibited in the District of Columbia and shall be absolutely void ab initio, without being so decreed, and their nullity may be shown in any collateral proceedings, namely:

First, The marriage of a man with his grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter, sister's daughter.

Second, The marriage of a woman with her grandfather, grandmother's husband, husband's grandfather, father's brother, mother's brother, father, stepfather, husband's father, son, husband's son, daughter's husband, brother, son's son, daughter's son, son's daughter's husband, daughter's daughter's husband, husband's son's

son, husband's daughter's son, brother's son, sister's son.

Third. The marriage of any persons either of whom has been previously married and whose previous marriage has not been terminated by death or a decree of divorce (Mar. 3, 1901, 31 Stat. 1391, c. 854, sec. 1283)."

which incidentally was passed after Section 966 (Title 14, Chap. 3, Sec. 63) Code D. C. 1929, though on the same day, it can be readily apparent that the Court was in error in reading Section 966 into Section 1283.

The Courts are practically uniform in holding that a provision such as the one in question in Section 966 is not *void*, but is at the most merely voidable, to be declared so only upon hearing and by judicial decree, and such marriage may only be declared void by judicial decree during the lifetime of the parties, even had it been celebrated in the District of Columbia.

Park v. *Barron*, 20 Ga. 702.
Tyler v. *Andrews*, 40 Apps. 100.
Mason v. *Mason*, 101 Ind. 25.
Abramson v. *Abramson*, 60 Apps. D. C. 119.

Such statutes are penal and do not render void the marriage of the guilty party celebrated in another State.

9 A. & E. Enc. Law, 2d Ed. 854, cases cited in Note H.

Such is the view taken by the Supreme Court of the United States in the case of Huntington v. Attrill, 148 U. S. 657, p. 674:

"And personal disabilities imposed by the law

of a State, as an incident or consequence of a judicial sentence or decree, by way of punishment of an offender, and not for the benefit of any other person—such as attainder, or infamy, or incompetency of a convict to testify, *or disqualification of the guilty party to a cause of divorce for adultery to marry again*— are doubtless strictly penal, and therefore have no extra territorial operation." (Italics ours.)

Citing—

Story, Confl. Laws 91, 92; Dicey, Domicil, 162;
Folliott v. *Ogden*, 1 H. Bl. 123, 3 T. R. 726;
Logan v. *United States*, 144 U. S. 263;
Dickson v. *Dickson*, 1 Yerg. 110;
Ponsford v. *Johnson*, 2 Blatchf. 51;
Com. v. *Lane*, 113 Mass. 458, 471;
Van Voorhis v. *Brintnall*, 86 N. Y. 18, 28, 29.

8. *The decision of the Court of Appeals also is a clear violation of the fundamental rights of complainant under Article 4, of the Constitution of the United States, requiring that full faith and credit be given to the public acts and records of the State of Florida, and judicial proceedings of the State of Virginia, and also under the Fifth Amendment to the Constitution requiring that complainant, before her rights shall be affected by judicial action shall have first been accorded due process of law, as required by said Fifth Amendment to the Constitution of the United States.*

Article 4, Section 1 of the Constitution reads as follows:

"Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Con-

gress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The Fifth Amendment to the Constitution reads as follows:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

So fully have the questions above been discussed herein, in principle, with citations of authorities, that it is deemed unnecessary to repeat the arguments made. It is only proper to repeat the following statement of the facts:

The decision of the Court of Appeals utterly ignored in express terms the effectiveness of the marriage of complainant in the State of Florida, after she had acquired her domicile there in good faith, and likewise refused to find valid her subsequent divorce a *mensa et thoro* from her deceased husband after she had acquired a domicile in Virginia in good faith, the Court of Appeals holding that said marriage in Florida, and its adjudication in Virginia, were immaterial and irrelevant to the property rights set up herein by complainant.

It is also necessary to repeat that closing the doors of the Equity Courts to complainant and placing a ban on her going into such courts in the District of Columbia for the protection of her rights was an express denial to her of due process of law. This was an express denial at the door of the Court, notwithstanding universally recognized principles establishing her right to, not only enter in any court where her rights were affected, but to have her rights in such Court judicially determined. As was said by the Court of Appeals of the District of Columbia in Harlow v. Carroll, 5 App. Cas. D. C. 128, heretofore quoted on page 13 this brief, as follows:

> "There is no such thing as legal outlawry in our American jurisprudence."

9. *That the Court of Appeals further committed error in its said decision in holding that Section 966 of the District of Columbia Code has extraterritorial effect, and that said Section bars the statutory dower of petitioner, when, admittedly on the record, she married her deceased husband while she was domiciled in the State of Florida and became his widow at the time of his death, when she was domiciled in the State of Virginia.*

The above point No. 9 has been fully covered by citations from the American Law Institute Restatement of the Law as to divorce decrees penalizing one of the parties having no extraterritorial effect and further giving to widows under remarriages beyond the jurisdiction of the Court fixing a penalty against a guilty party to a divorce proceeding, all property rights be-

longing to widows irrespective of such previous decree prohibiting remarriage in the jurisdiction granting the same. These authorities will be found under Points No. 2 and No. 3 and will not be reviewed again.

There is no public policy established by the law in the District of Columbia, which warrants the decision by the Court of Appeals.

The policy of the law has been fixed by statute in the District of Columbia, and requires no judicial extension or sanction to clarify or declare it. Only where there is *no* statute and where good morals demand it may the courts establish or declare public policy.

Upon the general subject of "Public Policy", 50 Corpus Juris, 858 we find the following:

> "Public Policy is that principle of the law which holds that 'no one' can lawfully do that which has a tendency to be injurious to the public or against the public good." (Cases cited.)
>
> "Public Policy" has been said to be synonymous with "policy of the law" (49 C. J. p. 1072).
>
> "In a judicial sense, public policy does not mean simply sound policy, or good policy, but it means the *policy of a state* established for the public weal either by law, by courts, or by general consent."

Under Title "Policy of the Law" we quote from 49 Corpus Juris, 1073 as follows:

> "A term synonymous with 'public policy', and difficult to define. It has been considered to refer to the purpose and spirit of the substantive laws of a state whether such laws be found in the Constitution and statutes or in judicial records."
>
> Citing *Johnston* v. *Chicago Great W. R. Co.*, 291 S. W. 120 (See 51 A. L. R. 877, 883).

Where the legislative powers of a given jurisdiction has declared a public policy that declaration is paramount and the only function of the courts is to interpret the reasonable meaning of the legislative enactments.

Quoting from the decision of the Supreme Court of the United States in *Hartford Fire Insurance Co. v. Chicago, M. & St. P. R. Co.*, 175 U. S. 91, wherein that Court quotes with approval from the language of the Supreme Court of Iowa in *Griswold v. Illinois C. R. Co.*, 90 Iowa, 265, we find the following:

> "In the first place, it was said: 'Public policy is variable; the very reverse of that which is the policy of the public at one time may become public policy at another; hence no fixed rule can be given by which to determine what is public policy. The authorities all agree that a contract is not void as against public policy, unless it is injurious to the interests of the public, or contravenes some established interest of society.' So far, the opinion is in precise accord with the opinion of this Court in *Pope Mfg. Co. v. Gormully*, 144 U. S. 224, 233, 36 Law. Ed. 414, 418, 12 Sup. Ct. Rep. 632. The Iowa Court then quoted with approval the saying of Sir George Jessel, M. R. in *Printing & N. Registering Co. v. Sampson*, L. R. 19, Eq 462, 465: 'It must not be forgotten that you are not to extend arbitrarily those rules which say that a given contract is void as being against public policy, because, if there is one thing more than another which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into fairly and voluntarily, shall be held sacred, and shall be enforced by courts of justice. Therefore, you have this paramount public policy to consider,—that

you are not lightly to interfere with this freedom of contract."

In view of the above authorities it is respectfully submitted that the Court of Appeals of the District of Columbia was utterly unwarranted in attempting to establish by judicial fiat a public policy for the District of Columbia to the effect that the plaintiff herein, while admitted to have been one of the parties to a marriage contract duly celebrated in accordance with the laws of the State of Florida, and one of the parties to a final limited decree of divorce from said marriage, while domiciled in the State of Virginia, by a competent court of such State, shall nevertheless not only have her marriage and its legal adjudication refused recognition in the District of Columbia by the laws of comity, but actually find the doors of the Chancery Court of said District closed to her when she attempts to enter them to assert her rights as the widow of her deceased husband.

Only by a declaration in legislation governing the District of Columbia, by the Congress of the United States declaring that the remarriage of a party found guilty of adultery while previously married could a policy of the law be established for this District, such as that attempted to be declared by the court of Appeals in the instant case. Had Congress made such an attempt it would have been of doubtful constitutionality, but since it did not do so, the rights of plaintiff herein must be recognized as in full force and effect not only because of her legal marriage in Florida, and its adjudication as legal in Virginia in a suit instituted by her deceased husband and lost by him, and won on a cross bill filed by her.

Wherever a remarriage of a person found guilty of adultery in one jurisdiction, and where the penalty is found in the statute against the guilty party only, a refusal to recognize the marriage in the jurisdiction where the decree was passed has been placed upon the ground either that the offending party left the jurisdiction with the wilful purpose to marry in another jurisdiction while domiciled in the original jurisdiction and with the intent to return to the original jurisdiction to live, or where the original jurisdiction had a statute declaring expressly and in terms that any such remarriage would be void wherever celebrated, thereby declaring a public policy against such remarriage.

PART IV

Conclusion

Upon a final analysis the case resolves itself as follows: Petitioner is the *widow* of Daniel Loughran, Jr., admittedly so by appellees. As such widow, according to the statutes in force in the District of Columbia, she is entitled to certain dower rights and rights to share in his personal estate.

The Court of Appeals has taken unto itself the legislative function of writing into Section 966 of the Code the following:

> "But if such guilty party remarry in another State, while domiciled there in good faith, he or she shall forever be barred of his or her courtesy or dower rights and rights to the personal estate of his or her deceased husband or wife, as the case may be."

No citation of authority is necessary to show that

that is within the realm of the legislative branch of the Government, and not the judicial.

"The Congress of the United States has taken it upon itself, while legislating for the District of Columbia, to determine in what way a widow may be barred of her dower rights.

Section 39, Title 14, Chapter 2, The Code of D. C. 1929—

"39. Same; forfeiture of dower by desertion and adultery of wife.—If a wife willingly leave her husband, and go away, and continue with her advouterer, she shall be barred forever of action to demand her dower, that she ought to have of her husband's lands, if she be convict thereupon, except that her husband willingly, and without coegeion reconcile her, and suffer her to dwell with him; in which case she shall be restored to her action. (13 Edw. I, c. 34, sec. 4, 1285; Kilty's Report p. 213; Alexander's Brit. Stat. 138; Comp. Stat. D. C. p. 36, sec. 165)."

Needless to say Section 966 is silent on this subject.

The effect of the Court of Appeals decision is to absolutely *bar* plaintiff from her dower rights.

By the mode of procedure in the District of Columbia, it is permissible *only* to bring an equitable proceeding to have a widow's dower allotted. The Court has closed its doors to your petitioner. She finds herself in an unenviable position,—that of a widow, and as such entitled to dower and a share of Daniel Longhran Jr.'s personal property,—but by reason of the Court's interpretation of Section 966 of the Code unable to realize on same.

The moment Daniel Loughran Jr. died, leaving petitioner surviving him, her inchoate right to dower became an absolute vested interest. The Court of Appeals by its decision has destroyed that interest and undermined petitioner's right to her interests in her deceased husband's estate. It did the thing which even the legislature was powerless to do, as an impairment of contract.

9 R. C. L. "Dower" Sec. 8, citing:
Strong v. Clem, 12 Ind. 37, 74 Am. Dec. 200.
Swartz v. *Andrews*, 137 Ia. 261, 114 N. W. 888, 126 A. S. R. 285.
McAllister v. Dexter & P. R. Co., 106 Me. 371, 76 Atl. 891, 21 Ann. Cas. 486, 29 L. R. A. (N. S.) 726.
Sutton v. *Askew*, 66 N. C. 172, 8 Am. Rep. 500.

It has taken away from her a vested right, a right of property, which the Constitution protects.

Pritchard v. *Norton*, 106 U. S. 124, 1 S. Ct. 102; 27 U. S. (L. Ed.) 104.

For the reasons above stated, it is respectfully submitted that the writ of certiorari to the Court of Appeals of the District of Columbia should be granted.

Respectfully Submitted,

ROBERT H. MCNEILL,
Attorney for Petitioner.